

## RECEIVER'S OFFICE BACKGROUND AND BUDGET

In April 2006, as a result of a class-action lawsuit accusing California of providing an unconstitutionally poor level of health care to state inmates, the U.S. District Court for the Northern District of California appointed a receiver to oversee improvements in prison medical services. The court-appointed receiver – not the secretary of the California Department of Corrections and Rehabilitation (CDCR) - has sole authority over health care delivery for the state's 170,000 inmates. The receiver in turn created a non-profit organization, called the California Prison Health Care Receivership Corporation, to oversee inmate medical care.

***Federal direction, but state money.*** While the receiver works for the federal court, the prison health care budget is paid for through the state general fund, and a majority of the state's prison health care workers are CDCR employees. The receiver requests funding in the same manner as other state agencies, and the Legislature retains its authority to monitor the receiver's budget and review budget change proposals. In addition, pursuant to a court order, the state Office of the Inspector General performs financial audits of the receivership's administrative spending and performance audits of health care delivery within the state's 33 prisons.

The receiver works closely with court-appointed officials in three other federal class action lawsuits regarding health care in state prisons. Litigation involving mental health care, dental care, and Americans with Disabilities Act issues also has resulted in court-ordered changes in state prisons, though none of those cases have led to a receivership.

***The Turnaround Plan guides the receiver's actions.*** The receiver's current actions are guided by a June 2008 document entitled, "Achieving a Constitutional Level of Medical Care in California's Prisons, The Federal Receiver's Turnaround Plan of Action." The plan lists six goals:

1. Ensure Timely Access to Care;
2. Improve the Medical Program;
3. Strengthen the Health Care Workforce;
4. Implement Quality Assurance and Continuous Improvement;
5. Establish Medical Support Infrastructure; and,
6. Build Health Care and Health Care-Related Facilities.

***Large increase in prison health care costs.*** Spending on prison health care has grown dramatically since the creation of the receivership. In Fiscal Year 2005-06, the state had 5,102 prison health care positions and spent \$1.2 billion on inmate health care. By Fiscal Year 2009-10, that had grown to 9,924 positions and \$2.2 billion – an 83 percent increase in cost in just four years. These figures include all health care, including dental and mental health, but medical services under the authority of the receivership account for more than 65 percent of these costs.

In budget documents released this month for Fiscal Year 2011-12, spending on inmate health care is proposed at \$2 billion, with 12,912 positions. Medical services under the authority of the receiver would account for about \$1.3 billion.

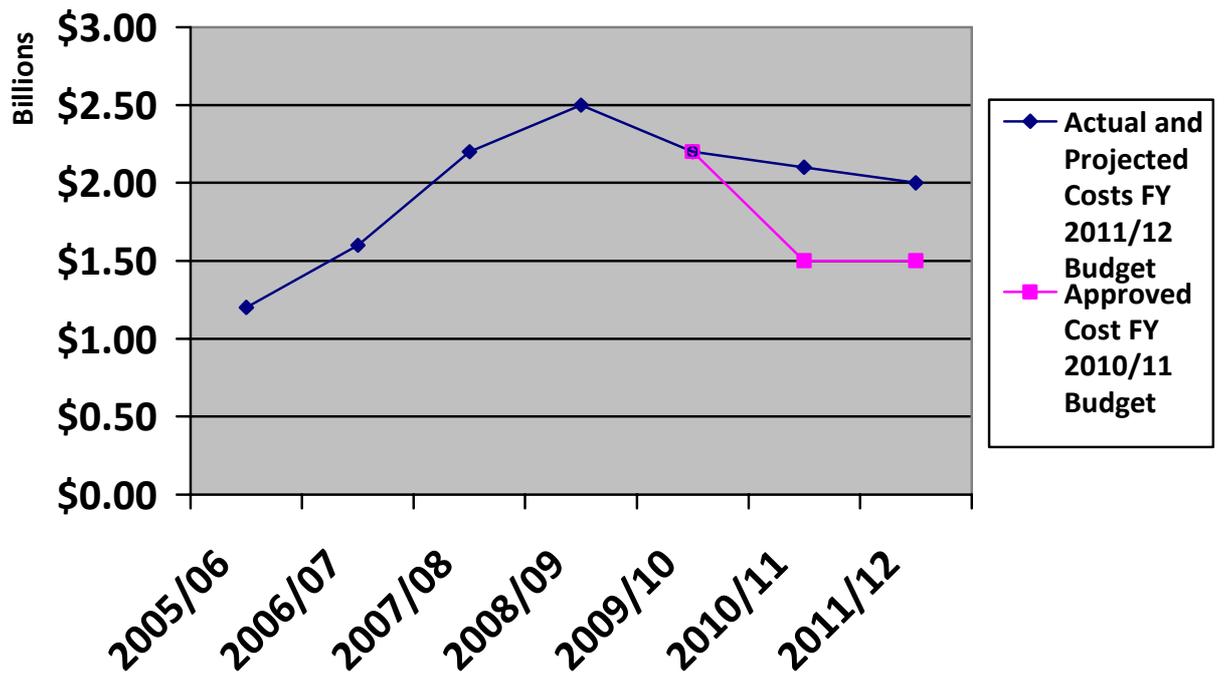
The budget documents indicate that an \$820 million cut to inmate medical services agreed to by the receiver for Fiscal Year 2010-11 has not been met; instead, only \$94 million was cut, or about 11 percent of the proposed reduction. The proposed budget indicates the state would spend about \$11,000 per inmate annually on health care services. Texas, which is the only state prison system comparable in size to California, spends about \$3,650 per inmate annually on health care services.

The receiver is J. Clark Kelso, who previously worked in state government as acting Insurance Commissioner and as the state's chief Information Officer. Kelso replaced the first receiver, Robert Sillen, in 2008. According to the Inspector General's most recent audit of administrative costs at the receiver's office, Kelso was paid \$366,847 in salary, benefits and performance-based supplemental payments in Fiscal Year 2008-09.

Attachment:

Chart, "*The Costs of Prison Medical Care in CA.*"

# The Costs of Prison Medical Care in CA



## CONSULTANT COSTS

As part of its original plan to construct seven new prison health care facilities and add 10,000 new beds for physically and mentally ill inmates to the state prison system, the receiver's office hired four construction consulting firms in 2007. One firm, URS/BLL, was the project manager and hired four other companies as subcontractors. In all, the state paid eight firms more than \$82 million between October 2007 and August 2010 to conduct construction planning, design blueprints for the new facilities and perform other tasks, such as environmental review of potential sites.

However, based on state budget constraints and an agreement struck by the receiver's office and the Schwarzenegger Administration in early 2009, most of the construction proposals have been scrapped. Instead of building 10,000 new medical and mental health beds, current plans include building a 1,722-bed medical and mental health facility in Stockton and renovating three former California Youth Authority facilities, which will create more than 4,000 medical and mental health beds. In conjunction with this agreement, the Department of Corrections and Rehabilitation was given authority over the construction consultants, although their expenses and salaries were still authorized by the receiver's office.

In October 2010, the Assembly Committee on Accountability and Administrative Review filed a Public Records Act request with the receiver's office, asking for invoices, receipts and contracts related to these consultants. Committee staff was allowed to review a sample of the documents related to the request for a brief period of time, mostly in April and May 2009. The receiver's office has told the Committee that it will not be able to provide all invoices responsive to the request until March.

The Committee was provided a one-page summary of total payments to the consultants, which is included in this binder. Based on the receipts and invoices the Committee obtained, which provide only a small glimpse into the detailed consultant costs, the Committee has the following concerns:

***Three construction design firms were hired to do the same job.*** Under a concept developed by the first receiver but continued by the second receiver that was dubbed "Co-Opetition," three companies were hired to work together to perform the same duties, including construction planning, cost analysis and development of a strategic plan regarding facility renovation and construction. According to receiver staff, the firms were hired to develop competing plans but also work together at various points once decisions were made on which plans provided the best value. All three firms were paid between \$8 and \$10 million during 2008 and 2009, at times billing the state as much as \$1.6 million per month. In all, the three firms were paid \$27 million for their planning work. Receiver's office officials say the process is atypical of the way the state contracts for construction jobs, but it led to innovative planning and design ideas and fewer change orders during the planning process.

***The state paid for numerous consultant expenses, including housing, dry cleaning, parking, meals and even book purchases.*** At least five different consultants charged the state for housing, including two consultants who appeared to be renting apartments and

charging the state more than \$2,200 per month. One consultant charged the state more than \$200 in one week for dry cleaning, and at least three others also charged the state for dry cleaning. Multiple consultants charged the state \$56 per day for food – well above the state travel policy that requires traveling state workers to spend \$34 or less per day on food. One firm with five consultants, earning between \$124 and \$326 per hour in salary, charged the state \$21,535 in expenses in one month. Another consultant who was earning \$3,000 per day charged the state for parking her car in the Denver airport for two weeks while she was in Sacramento. Consultants also spent more than \$1,200 on books, mostly on management philosophies. Titles included “The Toyota Way” and “Embracing Uncertainty: The Essence of Leadership.”

***Salaries for multiple consultants appear to be very high.*** According to one document, URS Bovis and its subcontractors had seven consultants earning more than \$20,000 per month in salary in 2009 and 2010, including one who earned between \$44,000 and \$50,600 per month for nine months in a row, which would equate to an annual salary of more than \$500,000. The consultant who earned \$3,000 per day worked for 16 days in May 2009, earning \$48,000 in one month.

Receiver officials state that in late 2008 or early 2009, the Receiver’s office added staff to begin auditing items such as consultant expenses. They note that some expense requests were denied, such as one receipt submitted for reimbursement that included the purchase of a \$70 bottle of Scotch.

***Consultant expenses could be a concern going forward.*** The Receiver’s office is in the process of implementing 19 different information technology projects, ranging from creating an electronic medical records program to a more efficient patient scheduling system. According to documents presented in 2010 to the Legislature, at least 13 IT consulting and vendor firms will be employed for these projects.

## STAFFING LEVELS

In the April 2006 order creating the receivership, the U.S District Court for the Northern District of California cited a lack of qualified medical staff as one of 15 findings illustrating an unconstitutional level of inmate medical care.

***Rapid growth in personnel.*** In response, the receiver's office raised salary levels of physicians, nurses and other medical positions and began an aggressive hiring campaign. A June 2007 report by the receiver to the federal court noted more than 1,000 prison medical staff were added between October 2006 and May 2007, and the state was on average hiring 25 registered nurses per month during that period.

Since then, the number of prison health care workers has more than doubled, growing from 5,102 positions in Fiscal Year 2005/06 to a projected 12,221 in Fiscal Year 2010/11. That includes 1,437 positions in FY 2010/11 in administrative positions that don't directly provide health care to inmates. These numbers include medical, mental health and dental positions.

***Concerns about staff size.*** In March 2010, Texas-based consulting firm NuPhysicia published a report that included an analysis of prison health care staffing in California in comparison with three other states. The comparison states, Texas, New Jersey and Georgia, all faced litigation alleging poor medical care in state prisons, and all emerged from the litigation during the past decade.

NuPhysicia's analysis indicates that California has significantly higher staffing levels than any of the other states. The report showed that California has one staff member per 14 inmates, compared with a staff-to-inmate ratio of 1:31 in New Jersey, 1:34 in Texas, and 1:30 in Georgia. Of the California system, NuPhysicia wrote, "it is apparent that an organization of this size is unnecessary to provide a constitutional level of care, is extremely expensive, and organizationally difficult to maintain simply given the sheer numbers of staff required for its operation."

The consultants also described an "oversized" central administration that "appears consumed in the generation of progress evaluations and reports, but is very disconnected from the local management teams at the individual units (prisons)." The report noted that California had an administrative staff nearly 7 times the size of Texas, which has an inmate population somewhat comparable to California.

The receiver's office has been working with the Department of Finance to prepare another report comparing California prison medical staffing with other states. That report is expected to be released within the next month.

***Despite staff increases, outcomes still lagging.*** As part of the effort to gauge the receivership's effectiveness, the state Office of the Inspector General has begun to conduct medical inspections of state prisons. The Inspector General uses 20 key components – ranging from how well prisons treat inmates with chronic conditions to how well prisons screen incoming inmates for potential health issues – and provides a percentage score for

each category and overall. Based on the scoring system, 86 percent or higher indicates a high level of adherence to policies and procedures, while 75 percent or lower indicates a low adherence to policies and procedures.

According to a report published in August 2010 that summarized the first 17 medical inspections the Inspector General conducted, only two of the 17 prisons scored above 75 percent overall – the large majority were not adhering to policies and procedures. The two prisons that were above the 75-percent benchmark barely made it: they scored a 76 and 78.

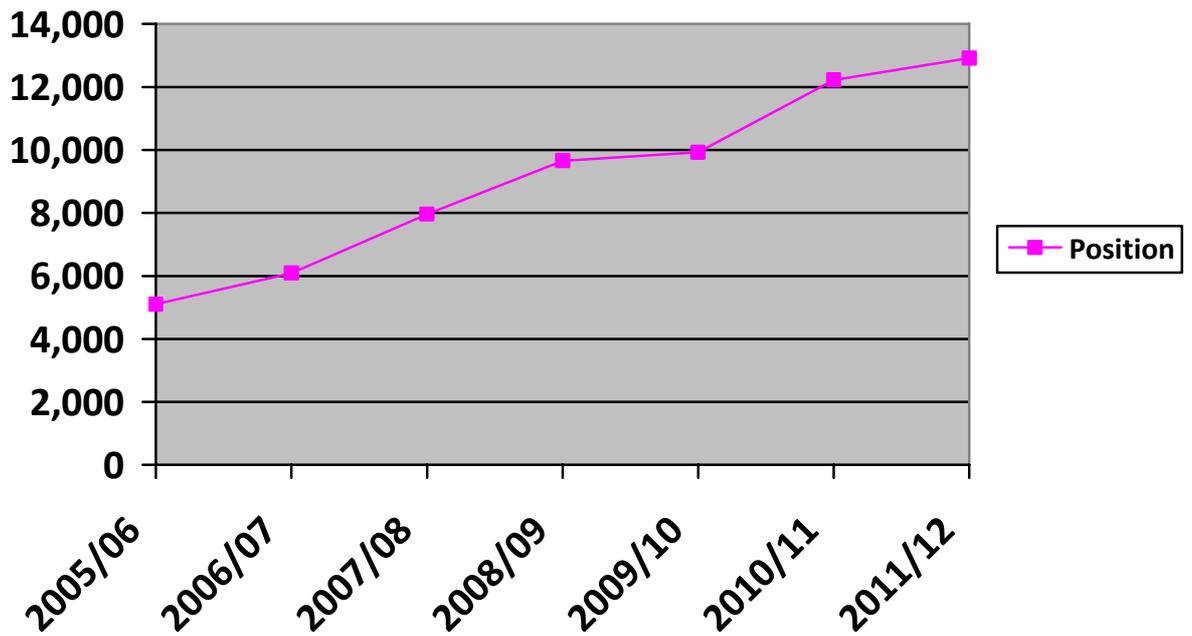
The 17 prisons' highest scores regarded staffing levels, in which the prisons scored a 96 percent for having medical personnel available at all times of the day and night.

Attachments:

Chart, *"Prison Medical Staffing Levels."*

Chart, *"California Prison Medical Staffing Comparison with Other States."*

# Prison Medical Care Staffing Levels



# California Prison Medical Staffing Comparison with Other States

| Position Type                              | Georgia                         | Georgia                        | New Jersey                      | New Jersey                     | Texas- UTMB                      | Texas- UTMB                    | California                       | California                     |
|--|---------------------------------|--------------------------------|---------------------------------|--------------------------------|----------------------------------|--------------------------------|----------------------------------|--------------------------------|
|  | 49,000 Inmates<br>36 Facilities | Positions per<br>1,000 inmates | 25,000 Inmates<br>13 Facilities | Positions per<br>1,000 inmates | 119,000 Inmates<br>86 Facilities | Positions per<br>1,000 inmates | 160,000 Inmates<br>33 Facilities | Positions per<br>1,000 inmates |
| Physicians                                 | 89                              | 1.8                            | 19                              | 0.8                            | 64                               | 0.5                            | 363                              | 2.3                            |
| Med-Levels (NP/PA)                         | 69                              | 1.4                            | 19                              | 0.8                            | 115                              | 1.0                            | 74                               | 0.5                            |
| Psychiatrists                              | 23                              | 0.5                            | 37                              | 1.5                            | 24                               | 0.2                            | 329                              | 2.1                            |
| Psychologists                              | 21                              | 0.4                            | 36                              | 3.3                            | 177                              | 1.3                            | 723                              | 4.0                            |
| Activity / Occ. / Rec. Therapists          | 34                              | 0.7                            | 13                              | 0.5                            | 14                               | 0.1                            | 259                              | 1.6                            |
| Counselor / Social Workers                 | 184                             | 3.8                            | 64                              | 2.6                            | 71                               | 0.6                            | 451                              | 2.8                            |
| Pharmacists                                | 28                              | 0.6                            | Contracted                      | Contracted                     | 37                               | 0.3                            | 142                              | 0.9                            |
| Pharmacy Techs.                            | 40                              | 0.8                            | Contracted                      | Contracted                     | 53                               | 0.4                            | 143                              | 0.9                            |
| RNs (all types)                            | 394                             | 8.0                            | 228                             | 9.1                            | 512                              | 4.3                            | 2,225                            | 13.9                           |
| LPN / LVNs                                 | 334                             | 6.8                            | 120                             | 4.8                            | 605                              | 5.1                            | 1,146                            | 7.2                            |
| Other Nursing Support                      | 65                              | 1.3                            | 78                              | 3.1                            | 453                              | 3.8                            | 154                              | 1.0                            |
| Dentists                                   | 24                              | 0.5                            | 19                              | 0.8                            | 79                               | 0.7                            | 402                              | 2.5                            |
| Dental Assistants                          | 34                              | 0.7                            | 20                              | 0.8                            | 112                              | 0.9                            | 605                              | 3.8                            |
| Dental Hygienists                          | 3                               | 0.1                            | 4                               | 0.2                            | 29                               | 0.2                            | 0                                | 0.0                            |
| <b>Total (All Positions All Job Types)</b> | <b>1,650</b>                    | <b>33.7</b>                    | <b>794</b>                      | <b>31.8</b>                    | <b>3,450</b>                     | <b>29.0</b>                    | <b>11,759</b>                    | <b>73.5</b>                    |

*\*NOTE - These figures do not include the additional 861 positions managed by the California Department of Mental Health utilized for the delivery of services to CDCR patients.*

Source: "Assessment and Evaluation: California's Opportunities for Improved Inmate Health Care Quality and Cost Controls."

March 15, 2010. NuPhysicia LLC.

## HEALTH NET CONTRACT

In June 2010, the receiver's office entered into a three-year contract with Health Net Federal Services to develop a network of doctors and other medical-service providers that will provide health care to inmates outside of the state's prisons. Services will include surgeries and other health care specialty services that aren't available inside prisons.

The contract is a significant piece of the receiver's "Turnaround Plan of Action," which is the document that describes the six goals needed to achieve a constitutional level of health care in prisons. Previously, the state had entered into multiple contracts around the state for specialty services, and CDCR has been criticized for negotiating costly deals and failing to provide adequate specialists for inmates. Outside medical care cost the state prison system more than \$650 million in Fiscal Year 2009-10.

The contract will allow one large provider network, Health Net, to develop and maintain a statewide network of doctors. According to the receiver's office, the contract will improve inmates' access to qualified specialists while cutting state expenses by allowing Health Net to leverage its existing network.

***The Legislature and public are not allowed to know how much the contract costs.*** In October 2010, the Assembly Committee on Accountability and Administrative Review asked the receiver's office for a copy of the contract via a state Public Records Act request. Committee staff were allowed to review the contract, but all references to cost and the rates Health Net will charge the state had been redacted. Among the redacted items were the front page of the contract, which describes the maximum amount of the contract, and entire chapters of the contract, which presumably describe specific rates that will be charged.

On November 18, 2010, the receiver's office provided the Committee with a letter describing the legal rationale for the redactions. The receiver's office is citing Government Code Section 6254.14, which exempts rate information in prison health care contracts from public disclosure for a period of three years; in this case, that is the entire length of the contract. Based on this statute, the agreement between the receiver's office and Health Net includes a clause stating the receiver, "shall make every effort to maintain confidential requested information indicated by the Contractor to be confidential within the confines of its authority."

Government Code Section 6254.14 was created by AB 1177 in 1995, a bill relating to several aspects of prison health care. According to an analysis of the legislation, the Department of Corrections pressed for the clause to allow prison health care rates to be kept confidential in part because it would negatively impact future negotiations if hospitals knew current rates. "... hospitals will request rates from current CDC contract hospitals to use as benchmarks for structuring a proposal. Such rate information sets a "floor" for rates proposals," according to the department's argument for keeping rates confidential, as stated in the bill analysis.

***Other health care rates affecting public agencies also are confidential.*** Health care rates for prisons are not the only health care rates exempt from public disclosure. At least

three clauses in the state Public Records Act (Government Code Section 6254 (q), 6254 (v), and 6254 (y)) protect rates in Medi-Cal contracts with hospitals, pharmaceutical costs, and contracts in the Healthy Families program. Officials with the California Medical Assistance Commission, which contracts with hospitals for Medi-Cal patients, the Managed Risk Medical Insurance Board, which administers the Healthy Families program, and the Legislative Analyst's Office offered the following rationale for the secrecy: because rates agreed to in state contracts by private health care providers or drug makers are typically lower than rates charged in the private sector, companies are concerned that publicly-known rates would hurt their negotiating abilities with others. Thus, if the rates with public agencies were to be disclosed, hospitals, pharmaceutical companies and others would have less incentive to enter into contracts with public agencies, or would seek higher rates.

The same argument could be made for almost any good or service the state procures, however. Only health care rates and costs receive exemption from public scrutiny.

***Oversight of public health care rates is possible, but limited.*** All of the exemptions allow for public disclosure of rates three years after the contract is issued. All of the exemptions also allow both the Bureau of State Audits and the Joint Legislative Audit Committee (JLAC) to review exempted contracts, but both must maintain confidentiality of the contracts, thus limiting their options in presenting an analysis to the Legislature or public as to whether rates or contracts are a fair cost to taxpayers. The receiver's office has delivered copies of its Health Net contract to both the State Auditor and JLAC, but neither have indicated they will perform any review unless it is requested during a JLAC meeting. The Auditor has noted that because they are required to keep cost information confidential, it is unclear what kind of analysis of the contract they could provide.

In the past, the Legislature has sought to review certain health care rates despite the exemption. In 2004, approved legislation required the State Auditor to review the state's procurement policies regarding pharmaceuticals. A subsequent report, "Pharmaceuticals: State Departments that Purchase Drugs Can Further Refine their Cost Savings Strategies," noted that both federal and state laws prohibited the Auditor from disclosing information that would reveal manufacturers or prices charged by manufacturers. The report included a high-level analysis of state purchasing practices and did not disclose specific prices. Also in 2004, the Legislature authorized the Legislative Analyst's Office (LAO) to review Medi-Cal contracts, although the authorization required the LAO to maintain the confidentiality requirements in state law. The LAO has not published any report on its review.